UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

DATATREASURY CORP. Plaintiff, v. SMALL VALUE PAYMENTS COMPANY Defendant.	No. 2-04CV-85

DEFENDANT SMALL VALUE PAYMENTS COMPANY'S MOTION FOR LEAVE TO FILE

Comes now Small Value Payments Company ("SVPCo"), Defendant, and files this Motion for Leave to File a Surreply (the "Surreply") to Plaintiff DataTreasury Corporation's Reply Brief on Claim Construction. In addition, SVPCo requests leave of this Court to file an oversized brief. For this Court's convenience, a copy of the Surreply is attached.

In this Court's Amended Agreed Case Management Order of July 27, 2005 (the "CMO"), this Court established a briefing schedule for the parties' claim construction issues. On March 15, 2006, DataTreasury Corporation ("DT") submitted its reply brief on claim construction (the "Reply"). Notwithstanding: (1) the instructions set forth in this Court's Patent Rules regarding the appropriate disclosure and exchange of claim terms and constructions; and (2) this Court's briefing schedule as set forth in the CMO, DT has advanced in its Reply constructions of various disputed claim terms and phrases that were never disclosed previously to SVPCo. Without the opportunity to respond to at

Dockets.Justia.com

least some of the claim construction arguments presented for the first time in DT's Reply, SVPCo is left sandbagged and substantially prejudiced.

In addition, given that DT filed an oversized Reply, SVPCo respectfully requests that this Court allow SVPCo a maximum of ten (10) additional pages over the allotted page limitation in this Court's Local Civil Rules so that SVPCo has a fair opportunity to respond to at least some of the issues raised for the first time in DT's Reply.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that this Court grant the instant motion and consider the attached Surreply. Also attached is a proposed form of order.

Respectfully submitted,

Preston W. McGee
State Bar No. 13620600
Flowers Davis, P.L.L.C.
1021 ESE Loop 323, Suite 200
Tyler, Texas 75701
(903) 534-8063
pmcgee@tyler.net

Of Counsel:
James H. Carter
James T. Williams
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, New York 10004
(212) 558-4000

Lawrence F. Scinto
Ronald A. Clayton
FITZPATRICK, CELLA, HARPER & SCINTO
30 Rockefeller Plaza
New York, New York 10112-3801
(212) 218-2254

Attorneys for Defendant and Counterclaimant Small Value Payments Company

CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing instrument was served upon all counsel of record in the above entitled and numbered cause on this the 24th day of March, 2006.

__X__ Via ECF

Ed Hohn
D. Neil Smith
Nix Patterson & Roach, L.L.P.
205 Linda Drive
Daingerfield, Texas 75638
edhohn@nixlawfirm.com
dnsmith@nixlawfirm.com
akbruster@nixlawfirm.com
benking@nixlawfirm.com
moniking@nixlawfirm.com
kimgarner@nixlawfirm.com

Rod A. Cooper
The Cooper Law Firm
545 E. John Carpenter Frwy. Ste. 1460
Irving, Texas 75062
rcooper@cooperiplaw.com
lremmel@cooperiplaw.com
mren@cooperiplaw.com
datatreasury@cooperiplaw.com

Joe Kendall
Provost Umphrey, L.L.P.
3232 McKinney, Ste. 700
Dallas, Texas 75204
jkendall@provostumphrey.com
krupp@provostumphrey.com

Eric Albritton
Albritton Law Firm
109 West Tyler Street
Longview, Texas 75601
eric@albrittonlawfirm.com

Johnny Ward
The Law Office of T. John Ward, Jr.

P.O. Box 1231
Longview, Texas 75601
jw@jwfirm.com

Pat W.M.
____